

REMARKS/ARGUMENTS

1. The rejections presented in the Office Action dated February 11, 2008 (hereinafter Office Action) have been considered. Claims 1, 2, 4-33, and 35-37 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

2. Claims 26-27 are rejected based on 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. According to the Office Action, Claim 26 recites a server comprising “means for” steps, and based on paragraph 0071 of the Applicant’s disclosure, the Examiner concludes “it is possible that the ‘server’ in the claims can be pure software.” (Office Action, page 2, lines 12-13). Applicant respectfully submits that this rejection is improper.

According to 35 U.S.C. 112, sixth paragraph, a claim limitation expressed in means-plus-function language “shall be construed to cover the corresponding structure described in the specification and equivalents thereof.” The present Specification states that “[h]ardware firmware, software or a combination thereof may be used to perform the various ... functions described herein.” (Specification, para. 0070). However, nothing here or elsewhere in the Specification suggests that firmware or software can exist outside of the disclosed structures. The disclosed structures include, for example, “program(s)... embodied on one or more computer-usable media,” and “software [combined] with appropriate general purpose or special purpose computer hardware to create a presence enhanced group management system.” (Specification, para. 0070).

There is no support for the apparent contention that functions set forth in Claims 26-27 can be accomplished using software only, at least because Applicant can find no reasonable definition of terms such as “pure software” and “a program in-and-of itself.” The Specification has not described software existing outside of hardware, computer-usable media, or other structures. Nor has the Office Action explained how a program can reasonably be understood to exist outside of a computer readable medium, apparatus, or other structures. It is also unclear how an apparatus can perform functions such as “accumulating presence information relating to a group” (Claim 26) without some sort of physical embodiment.

Even a heretofore unknown form of “pure software” could be shown to exist, Claims 26-27, as amended, are directed to an apparatus, which is a statutory class of invention. The Specification does not describe, nor has the Examiner alleged or shown, that any disclosed structure performing the functions described in Claims 26-27 is a non-statutory class of invention, nor have Applicants stated or implied that such functions can occur outside of physical devices. For example, the Examiner has not shown that Claims 26-27 can be construed, in view of the Specification, as including structures that are of a non-statutory category such as an abstract idea, law of nature, natural phenomenon, or transitory propagating signal. On the contrary, it would be unreasonable to suggest that an abstract idea, law of nature, natural phenomenon, or transitory propagating signal can be considered a “structure” as such term is known in the art.

Even if the Examiner could show software that exists in a non-statutory “structure,” Claims 26-27, as amended, are directed to an apparatus, which is a well-established statutory class of invention. Even a claimed apparatus that employs purportedly non-statutory subject matter does not render the apparatus itself non-statutory. “A process, machine, manufacture, or composition of matter employing a law of nature, natural phenomenon, or abstract idea is patentable subject matter even though a law of nature, natural phenomenon, or abstract idea would not, by itself, be entitled to such protection.” *Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*, OG Notices 22 November 2005, Annex II-B(i), citing *State Street Bank & Trust v. Signature Financial Group, Inc.*, 149 F.3d at 1374, 47, USPQ2d at 1601.

Therefore, Applicant submits that the rejection of Claims 26-27 is based on clear errors of both fact and law, and withdrawal of the rejection is respectfully requested.

3. Claims 20-25 and 28-29 are rejected based on 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. These claims recite a “computer-readable medium” and, according to the Office Action, paragraph 70 of the Specification “states that computer readable medium includes transmission medium.” (Office Action, page 3, lines 1-2). Applicant respectfully disagrees. The portion of the Specification cited in the Office Action states “[a]rticles of manufacture encompassing code to carry out functions associated with the present invention are intended to encompass a computer program that exists

permanently or temporarily on any computer-usable medium or in any transmitting medium which transmits such a program.” (Specification, para. 0070). At most this states that a computer program can be transmitted by a transmitting medium, and does not state or imply that a computer-readable medium is intended to include a transmitting medium. However, in order to facilitate prosecution, Applicant has amended Claims 20-25 and 28-29 to recite a “computer-usable medium,” and withdrawal of the rejection is respectfully requested.

4. Claims 1-8, 11, 12, 14, 15, 17, 20-23, 26-31 and 34-37 are rejected based on 35 U.S.C. §102(e) as being anticipated by U.S. Publication No.2003/0083046 by Mathis (hereinafter “Mathis”). Applicants respectfully traverse the rejections.

Regarding independent Claims 1, 11, 15, 20, 26, 28, and 30 the Office Action cites Mathis as teaching presence information associated with a group of terminals. For example, Claim 1 is directed to a method that involves maintaining presence information associated with a group of terminals wherein availability is determined using presence information associated with the group of terminals. Claims 11, 15, 20, 26, 28, and 30 recite analogous features. Applicants respectfully submit that Mathis does not expressly or inherently teach associating a single availability state associated with a group of terminals.

As set forth in the specification, the term “group” refers to a user-defined relationship between individuals for collective communications with the group. For example, “a particular owner of any mobile group may create a group-specific presence instance of a group, while continuing to use the group, for example, as a buddy list,” (Specification, para. 0028); “[t]he present invention facilitates ...providing a common reference point for the group members to be used to automate presence status changes for the group and its members,” (*Id.*); “[g]roup presence...may also provide a group's reference point as to group member availability” (Specification, para. 0028). The use of these groups allows individual members’ presence to be collectively combined into a group presence (*e.g.*, “[t]he group may also be free to define its own set of presence attributes, thus allowing management of the group's image as seen by other group members,” Specification, para. 0034).

In contrast, Mathis describes two types of groups, both of which were referenced in the Office Action. First, at paragraph 0010, Mathis describes use of multicasting to distribute information to locally clustered groups of users with similar contact lists. As is well known in

the art, multicasting is a networking technology for delivering information to a group of destinations simultaneously using the most efficient strategy to deliver the messages over each link of the network only once. (e.g., Mathis, para. 0012). Thus, any description of multicasting “groups” in Mathis relates to a special term of art describing a network technology for transmitting to multiple nodes on a network segment using a single message, and is unrelated to user-formed presence groups.

In Mathis, the “multicast groups” allow multiple nodes to receive the same messages on a single address. However, Mathis does not describe a user-created group that may have a single availability status. Even if descriptions in Mathis of associating presence messages with a multicast group could be relied upon to show, for example, associating presence information with a group of terminals, this would still not be applicable to the type of “groups” as described in the Specification and with features expressly set forth in the claims. For example, paragraph 34 of the Applicant’s Specification, states:

[0034] Group presence according to the present invention enables groups and their associated presence information to function as intermediaries of information. That is to say that information sharing, presence status, preferred contact types, changes in group members' schedules/data/etc., may be communicated between members of the group. The group may also be free to define its own set of presence attributes, thus allowing management of the group's image as seen by other group members as well as by externalities to the group. Examples of such group presence attributes may include the group's presence status, security level, group icons/logos, application rules for presence, status changes, availability rules for the group, and preferred contact types for the group. (emphasis added)

Thus, in order to expressly show “groups” as in Applicant’s claims, Mathis must show a presence group is capable of having its own set of presence attributes. This characteristic is explicitly set forth at least in Claims 11, 26, 28, and 30 as filed (e.g., “availability status of the group”). In addition, the present response is accompanied by amendments to Claims 1, 11, 15, 20, 26, 28, and 30 to more clearly set forth that a composite availability status applicable a group is formed using programmable availability rules that use the presence information of group members. The multicast groups in Mathis fail expressly or inherently teach an availability status associated with a group that is formed by combining the status of the group’s members. The multicast groups in Mathis are not user-created, but are defined by a server in order to maximize efficient use of network resources (e.g., Mathis, para. 0014, “the server 112

provides each client device...with one or more multicast addresses organized to optimally distribute presence update information”). Further, the data in the common multicast message, although collected for distribution to multiple entities of a multicast group, only contains status of individual devices/users (e.g., “server 112 provides the initial presence status of the client devices 102, 104, 106, 108 to each client device, and the multicasting technique is subsequently used by the server to provide updates to the presence status,” Mathis, para. 0019; emphasis added).

The second mention of groups in Mathis is at paragraph 0015, where Mathis states “contact lists 122, 124, 126, 128 may also identify a group or collection of users in addition to, or instead of, individual users.” Even if it could be implied that such group or collection of users may be a user-defined group, Mathis still fails to expressly or inherently describe associating a unique availability status to such groups or collections in the contact lists. For example, paragraph 0016 only describes presence status as “[i]nformation about the user and/or client device 102, 104, 106, 108 may be associated with each entry.” Here, as elsewhere in Mathis, availability is described as being applicable to only individual users/devices. Further, Applicants note the reliance on paragraph 0019 of Mathis to show using programmable availability rules. However, here Mathis is describing “collective presence information” for purposes of “disseminating present status” using multicast group messages. The actual status communicated in this way is still “presence status of the client devices” (Mathis, para. 0019, lines 20-22) and nowhere does Mathis describe forming composite status that is applicable to a user-defined group, in particular the groups/collections described on paragraph 0015 of Mathis.

Thus, paragraph 0015 of Mathis teaches use of individual presence data associated with each member of the “groups or collections” in the contact lists. Paragraph 0019 of Mathis teaches the forming of a collective status associated with multicast groups that are not user defined, but defined by a server based on target devices being connected to the same network segments. Further, such collective status of the multicast message is still used only to communicate the presence state of individual devices/users in a single message. As such, Mathis cannot be relied upon to teach a composite availability of a user-defined group based on the availability of individual members of the group. In order to show such a composite group available, Mathis would have to describe, for example, how conflicting availabilities of the

group members (e.g., some members available, other members unavailable) are resolved and displayed, such as via availability rules as set forth in the present claims. Compositing member availability to form a group availability is not taught in Mathis, so for at least this reason, Mathis fails to anticipate independent Claims 1, 11, 15, 20, 26, 28, and 30.

Dependent Claims 2 and 4-7 depend from independent Claim 1; dependent Claims 12 and 14 depend from independent Claim 15; dependent Claims 21-23 depend from independent Claim 20; dependent Claim 27 depends from independent Claim 26; dependent Claim 29 depends from independent Claim 28; and dependent Claims 31-33 and 35-37 depend from independent Claim 30. These dependent claims also stand rejected under 35 U.S.C. §102(e) as being anticipated by Mathis. While Applicant does not acquiesce with the particular rejections to these dependent claims, including any assertions concerning inherency or the taking of Official Notice, these rejections are now moot in view of the remarks made in connection with independent Claims 1, 11, 15, 20, 26, 28, and 30. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from Mathis. Therefore, dependent Claims 2, 4-7, 12, 14, 21-23, 27, 29, 31-33, and 35-37 are also allowable over Mathis

5. Claims 9, 10, 18, 19, 24, 25, 32 and 33 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Mathis in view of U.S. Patent No. 6,457,062 to Pivowar et al. (hereinafter “Pivowar”). Applicants respectfully traverse the rejections. Claims 9, 10, 18, 19, 24, 25, 32 and 33 ultimately depend from Claims 1, 15, 20, and 30, respectively. The rejections rely on Mathis as teaching the substance of the claims from which these claims depend, and Pivowar was not relied upon as providing a remedy to the deficiencies of Mathis as it pertains to independent Claims 1, 15, 20, and 30. Nor does Pivowar provide such a remedy. Thus, because neither Mathis nor Pivowar teach at least the recitations of Claims 1, 15, 20, and 30, a combination of Mathis and Pivowar fails to teach these recitations. Further, a combination of Mathis and Pivowar fails to suggest the invention set forth in Claims 1, 15, 20, and 30, as there is no reference to at least forming composite availability of a group using availabilities of the group’s members. While other requisites of establishing prima facie obviousness may also be absent, the Applicants respectfully submit that the cited combination of references at least fails to teach or suggest all of the claim limitations. For at least this reason, Claims 9, 10, 18, 19, 24,

25, 32 and 33 are not rendered obvious by the combination of Mathis and Pivowar, and withdrawal of the rejection is respectfully solicited.

Applicants also note that, although Pivowar describes “synchronizing calendar data sets,” (e.g., Pivowar, Abstract), nowhere does Pivowar teach or suggest synchronizing calendar/task data with group communication channels that use “presence” to determine availability. Pivowar fails to use the term “presence” or to use any other terminology that might be associated with “presence,” as such term is used in the realm of instant communications (e.g., voice, instant messaging). Pivowar is only describing the synchronization of data such as “calendar information or contact information, i.e. mailing addresses, telephone numbers, facsimile numbers, electronic mail address, scheduled meeting, appointments” in the context of personal information managers (e.g., Pivowar col. 4, lines 15-32), and Pivowar fails to teach or suggest any relation between such personal information manager data and the determination of dynamic availability via presence technology.

So, for at least these reasons, the combination of Pivowar and Mathis fails to teach or suggest all of the claim limitations, nor has the Office Action set forth any rationale why claim limitations not taught by the combination of references would nonetheless be obvious to one of ordinary skill in the art. Thus it is respectfully submitted that Claims 9, 10, 18, 19, 24, 25, 32 and 33 are allowable over the combination of Mathis and Pivowar.

6. Claims 13 and 16 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Mathis in view of U.S. Patent No. 7,031,700 to Weaver et al. (hereinafter “Weaver”). Applicants respectfully traverse the rejections. Claims 13 and 16 ultimately depend from Claims 12 and 15, respectively. The rejections rely on Mathis as teaching the substance of the claims from which these claims depend, and Weaver was not relied upon as providing a remedy to the deficiencies of Mathis as it pertains to independent Claims 12 and 15. Nor does Weaver provide such a remedy. Thus, because neither Mathis nor Weaver teach at least the recitations of Claims 12 and 15, a combination of Mathis and Weaver fails to teach these recitations. Further, a combination of Mathis and Weaver fails to suggest the invention set forth in Claims 12 and 15, as there is no reference to at least forming composite availability of a group using availabilities of the group’s members. While other requisites of establishing prima facie obviousness may also be absent, the Applicants respectfully submit that the cited combination

of references at least fails to teach or suggest all of the claim limitations. For at least this reason, Claims 13 and 16 are not rendered obvious by the combination of Mathis and Weaver, and withdrawal of the rejection is respectfully solicited.

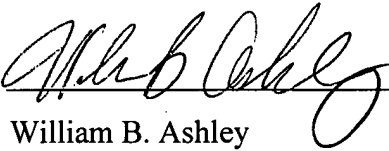
7. Authorization is given to charge Deposit Account No. 50-3581 (NOKM.089PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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